



# Nonconforming Structures

Gary Heinrichs



# Nonconformities

- Nonconformities are lots or structures which
  - legally existed at the time an ordinance took affect &
  - do not conform to the terms of a revised ordinance
- Current uses are protected
- Expansion should be limited consistent with rule and/or ordinance objectives
- **It's not what you call it -- it's how you treat it**



# Nonconformities

The **Goal** is to: Achieve rule/ordinance objectives of protecting water quality, wildlife habitat and natural scenic beauty while allowing reasonable use of these lots and structures

**Why limit expansion of  
nonconforming  
structures?**





# Statutory Objectives

Section 281.31, Wisconsin Statutes provides that shoreland subdivision and zoning regulations shall:

- maintain safe and healthful conditions
- prevent and control water pollution
- protect spawning grounds, fish and aquatic life
- control buildings sites, placement of structures and land use
- reserve shore cover and natural beauty



# Nonconformity

Chapter NR115 states that “Under s. 59.69 (10), Stats., the continuation of the lawful use of a building, structure or property, existing at the time an ordinance or amendment takes effect, which is not in conformity with the provisions of the ordinance or amendment, including routine maintenance of such a building or structure, shall not be prohibited, but ...



# Nonconformity

the alteration of, addition to, or repair, over the life of the building or structure, in excess of 50% of the equalized assessed value of an existing nonconforming building or structure may be prohibited.”

THUS - the 50% rule is born.



# Background

- Nonconforming structures have been an issue since the advent of zoning laws in the 1920's
- Shoreland nonconforming structures are allowed unlimited routine maintenance, but are limited to 50 percent of assessed value for additions, alterations and repairs



# Problems

This method causes multiple problems for zoning officials including;

- unequal assessments,
- no tracking mechanism for improvements,
- internal improvements which are not monitored,
- and no permitting required for structural repairs.

# Attorney General Opinion about Nonconforming Structures 1997 Wis. Op. Gen 2

“A county may enact a shoreland zoning ordinance with no ‘50% rule’ but should, and has broad authority to, restrict nonconforming uses or structures in some manner to bring them ultimately into compliance with the ordinance.”

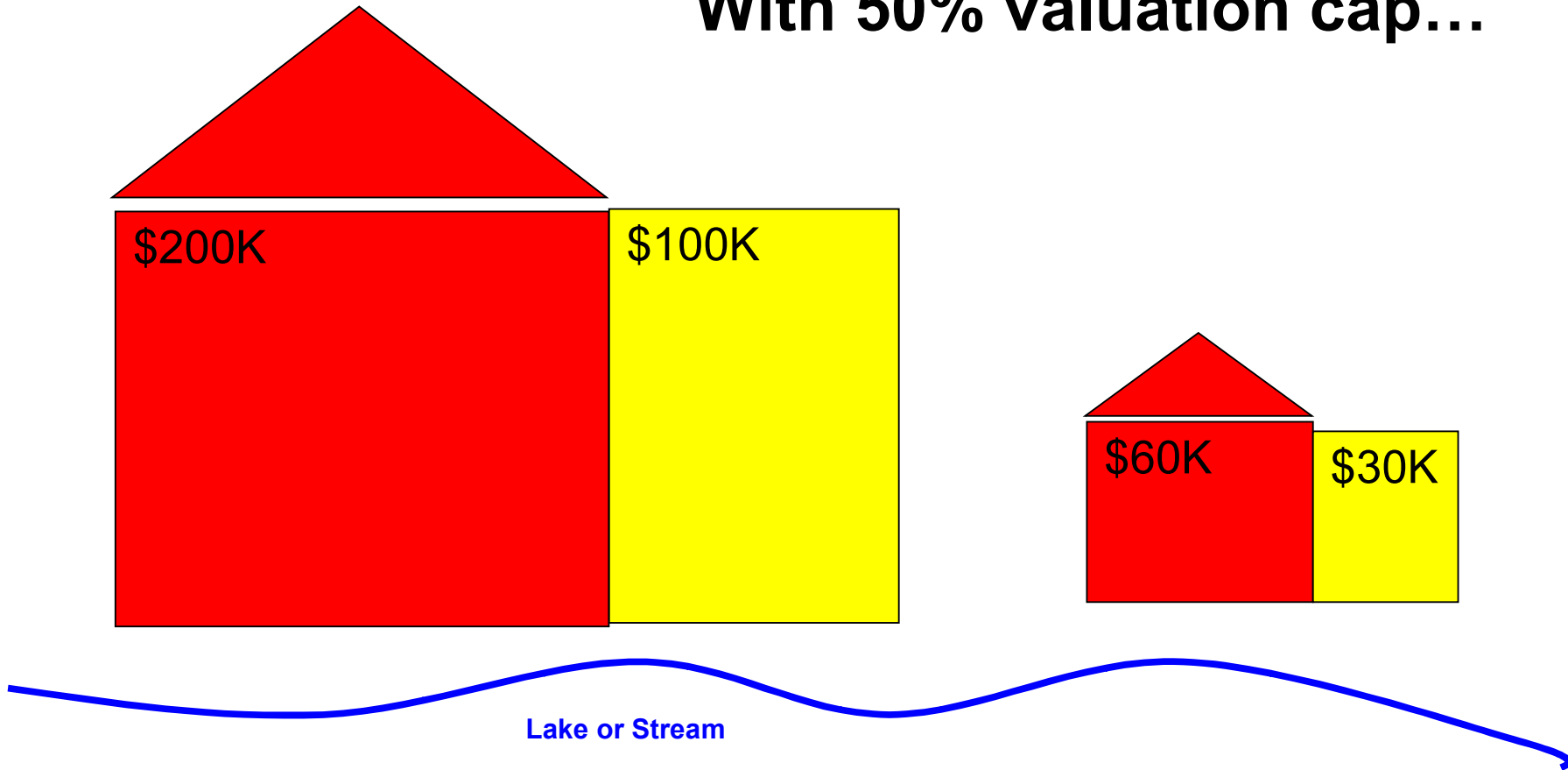


# Nonconforming Case Law Summary

Linda Meyer

# Expansion of existing structures

With 50% valuation cap...





# Nonconforming Structure Options

- Differentiate between principal and accessory structures?
- Differentiate based on how close to the water a structure is?
- Replace the valuation cap?
- Achieve functional compliance with the ordinance by compensating for expansion with **mitigation**?

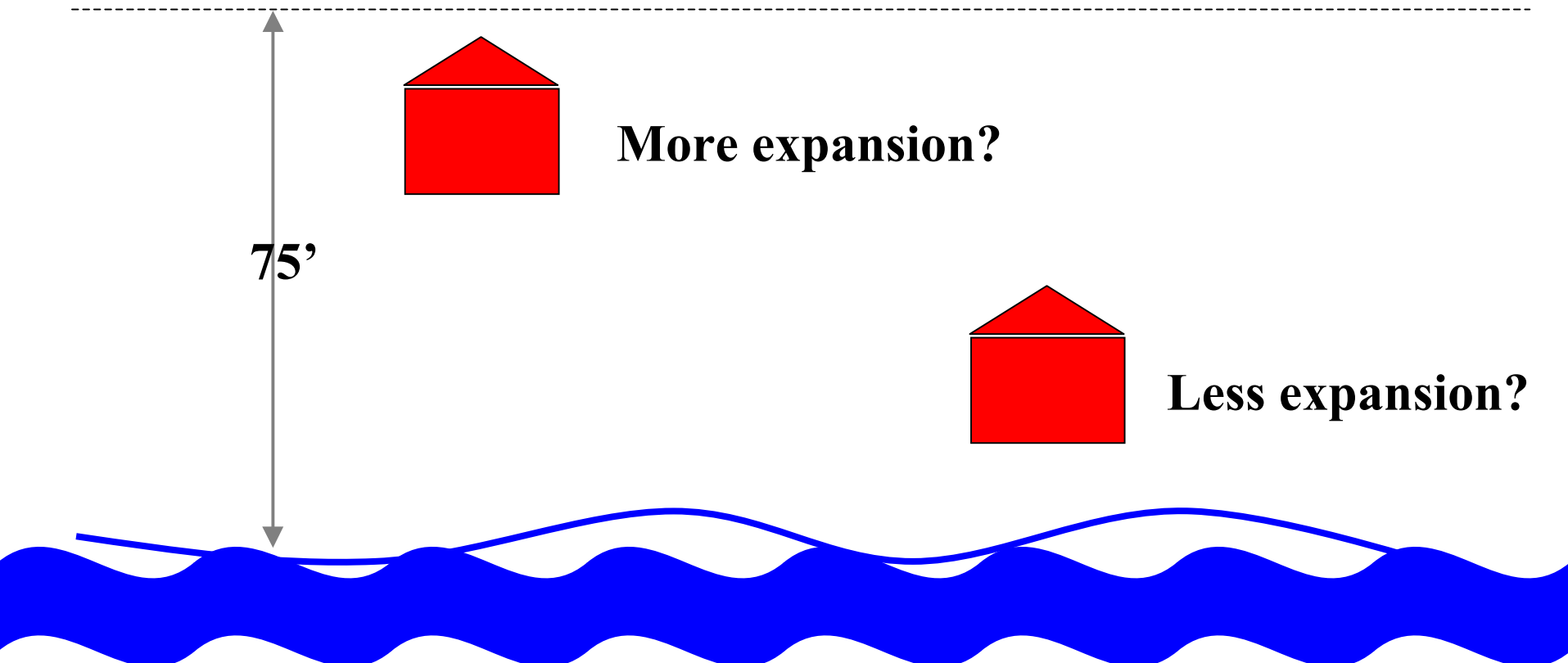


# Principal and Accessory Structures?

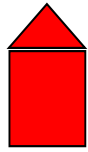
- Allow limited expansion of principal structures (essential to reasonable use)?
- Do not allow expansion of accessory structures within the shoreland setback such as sheds, garages, etc. (incidental to reasonable use)?

# Proximity to the Water

Structures closer to the shoreline deliver more pollutants to the lake, have a larger impact on wildlife habitat & natural beauty.

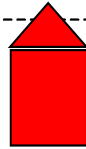


# Expansion of Structures Linked to Distance from the Water



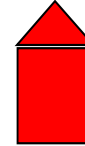
75' setback gets expansion up,  
down or parallel

75'



50' setback gets 50%  
building expansion

50'



Less than 50' setback gets  
unlimited internal improvement  
and no expansion

Lake or Stream

**Use of an area cap instead of a valuation cap is more  
fair to property owners, and it is easier to enforce.**

# Nonconforming Structure Options

- Replace the 50% valuation cap with an area or impervious surface cap and total area limit.
- Replace the 50% valuation cap with a sliding scale expansion or total area cap?
- Unlimited Maintenance and Repair Within Current Structure Envelope - no alteration of envelope, no additional habitable space, no changes to accessory structures, envelope can only be expanded by bringing entire structure into compliance

# Nonconforming Structure Options

**Mitigation** is REQUIRED in exchange for expansion to achieve functional compliance?

- ‘Technical’ compliance in terms of removing nonconforming structures is not as likely
- ‘Functional’ compliance (through mitigation) to achieve ordinance objectives of protecting water quality, wildlife habitat, and natural aesthetics is more likely.



# Additional Options

- To simplify tracking of expansions:
  - 1-time expansion up to 50% of structure footprint
- To notify potential buyers:
  - One-time expansion recorded with deed
  - Record mitigation plan with deed



# Additional Options

- To provide incentives to move small structures:
  1. Structures must have a full basement or frostwall to expand
  2. Structures must have more than \_\_\_\_ sq. ft. of enclosed dwelling space to expand